before a court,[5] nor need a right to an appeal and rehearing be given.[6] But such notice and hearing must be given as of right and not by favor.[7]

When the tax can be collected only by legal proceedings, requiring judicial notice and permitting a hearing as to the merits, there is clearly due process of law.[8] Again, everything necessary is afforded when the statutes expressly allow a suit to enjoin the collection of the taxes, upon the trial of which suit their validity and amount can be questioned.[9] But this ought to be subject to the qualification that there must be constructive notice of some sort given a reasonable time before distraint. In a recent case the Supreme Court has given another application of what is to be considered due process. *Security Trust & Safety Vault Co.* v. *City of Lexington*, U. S. Sup. Ct., Dec. 3, 1906. In this case none of the previously mentioned methods of hearing was provided for by any statute, but the state courts held that the taxpayer was entitled to a hearing on the merits in a suit to enjoin collection of the taxes, and gave such a hearing. The Supreme Court denied the plaintiff's contention that thereafter the enforcement of the taxes was without due process of law. The result accords with the general interpretation of the clause by the Supreme Court, and formulates a doctrine that a state may thus afford the due process required by the Amendment, regard being had to the above-mentioned qualification as to notice. The holding of the state court seems to have amounted to a construction of the taxing statute in view of constitutional restrictions.[10] But it is highly probable that if in this case the original suit to enjoin had been brought in a federal court, it would have succeeded. Injunctions have been frequently granted where notice and hearing were not specifically provided for in any of the foregoing ways.[11]

It is apparently now settled that federal courts will not take the view that due process is lacking because of any hardship or inequality in the method of taxation.[12] The case of Norwood *v.* Baker[13] to the contrary has been so limited that little, if any, ground is now left for its supposed doctrine.[14] Nor will the federal courts construe the Amendment to justify a review of alleged errors in individual instances made by state courts in administering the admittedly due process, if correctly enforced, which the state has provided.[15]

THE CRIMINAL LIABILITY OF CORPORATIONS. — The belief long obtained that since a corporation is only a fictitious person created and invested with certain functions by the state, it was capable of doing only acts expressly permitted in its charter; that anything further, being *ultra vires*, was not the act of the corporation; and hence that there could be no corporate

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[5] Merchants Bank *v.* Pennsylvania, 167 U. S. 461.
[6] Andrews *v.* Swartz, 156 U. S. 272.
[7] Stuart *v.* Palmer, 74 N. Y. 183.
[8] Kentucky Ry. Tax Cases, 115 U. S. 321; Hagar v. Reclamation District, *supra.*
[9] Oskamp *v.* Lewis, 103 Fed. Rep. 906.
[10] See Paulsen *v.* Portland, 149 U. S. 30; Rawlins *v.* Georgia, 201 U. S. 638.
[11] Albany Bank *v.* Maher, 9 Fed. Rep. 884; Scott *v.* Toledo, 36 Fed. Rep. 385.
[12] Walston *v.* Nevin, 128 U. S. 578.
[13] 172 U. S. 269.
[14] See French *v.* Barber Asphalt Co., 181 U. S. 324. See also 14 HARV. L. REV. 1–19; 15 *ibid.* 307.
[15] Arrowsmith *v.* Harmoning, 118 U. S. 194. See 1 HARV. L. REV. 314–326.

liability for torts or crimes.[1] But as corporate activities increased, public policy demanded that wrongs should go no longer without remedy, so that it is now everywhere settled that *ultra vires* is not a defense to civil actions.[2] The established rules of agency apply as soon as the difficulty of *ultra vires* is removed: by the doctrine of *respondeat superior* a corporation becomes liable civilly for even the malicious acts of its officers and other agents, if done in the discharge of their official duty or in the scope of their employment.[3] Thus it has been held that a corporation may be liable for deceit, fraud, libel,[4] conspiracy,[5] malicious prosecution,[6] and other torts where wrongful motive is the gist of the action. Indeed, a corporation is so far treated as a natural person that exemplary damages are allowed just as against an individual, provided the wrongful act is authorized or ratified.[7]

The difficulty is in determining to what extent the analogy of civil liability shall be applied to crimes. As might be expected, the early decisions holding that corporations are incapable of committing any crime have been greatly modified by the more modern view of the nature and responsibilities of a corporation, on the ground that society should be protected from the wrongful acts of increasingly powerful corporate persons. It was soon felt reasonable to punish by fine for the criminal neglect of officers or agents. Later the distinction between non-feasances and misfeasances was obliterated. Corporate business is necessarily transacted through agents, and if the corporation, as principal, is held criminally liable for the omissions of its agents, there seems good reason to punish it also for their affirmative acts. But in the decisions which first took this step there were strong dicta that corporate criminal liability extended only to those misfeasances the simple doing of which was prohibited regardless of motive, intending thereby to exclude all crimes in which *mens rea* is essential.[8] The distinct tendency of modern decisions, however, is to widen the scope of liability. Following the reasoning of the courts in civil suits, it has been held that a corporation may be indicted for libel[9] and fined for contempt.[10] Recently a federal court has decided that a corporation may be guilty of a criminal conspiracy under the Sherman Anti-Trust Act.[11] *United States* v. *MacAndrews and Forbes Co.*, 36 N. Y. L. J. 815 (Circ. Ct., S. D. N. Y., Dec., 1906). If a corporation may be sued for malicious prosecution and punitive damages recovered, it seems justifiable to punish by fine an injury to the public.[12] It is as easy to impute malice from the agent to the corporation in a criminal case as in a civil suit. It would seem, then, that a corporation may be charged with any crime that can be committed through an agent, and which is done by its officers or agents within the scope of their authority. Of course punishment can be inflicted only when fines may be imposed.

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1 See Orr *v.* Bank of United States, 1 Oh. 28.
2 Nat. Bank *v.* Graham, 100 U. S. 699, 702.
3 See Stewart *v.* Wright, 147 Fed. Rep. 321, 327, and cases there cited.
4 Philadelphia, etc., R. R. Co. *v.* Quigley, 21 How. (U. S.) 202.
5 Buffalo Oil Co. *v.* Standard Oil Co., 106 N. Y. 669.
6 See 13 HARV. L. REV. 59.
7 Denver & Rio Grande Ry. *v.* Harris, 122 U. S. 597, 609.
8 Queen *v.* Gt. North of England Ry. Co., 9 Q. B. 315; State *v.* Morris & Essex R. R. Co., 3 Zab. (N. J.) 360.
9 State *v.* Atchison, 3 Lea (Tenn.) 729.
10 Telegram Newspaper Co. *v.* Commonwealth, 172 Mass. 294.
11 26 Stat. at L. 209, July 2, 1890, c. 647.
12 State *v.* B. & O. R. R. Co., 15 W. Va. 362, 380.

Naturally the active agents are also personally liable to fine or imprisonment, and they may be indicted jointly with the corporation.[18]

CONSENT AS THE BASIS OF PERSONAL JURISDICTION. — No recovery is allowed on a foreign judgment rendered by a court having no jurisdiction.[1] Usually it is enough for the defendant to prove affirmatively that in the former action there was no personal, intra-territorial service upon him,[2] though this plea may be overthrown by showing that he appeared in the former action as plaintiff,[3] or voluntarily and without protest as defendant.[4] If the parties submit to the jurisdiction of the court they are normally concluded by its judgment.

Jurisdiction may also be conferred on the court by agreement between the parties. Thus an express contract so to do is sufficient.[5] A power to confess judgment upon a note, conferred by the note itself, is valid,[6] though it must be strictly pursued.[7] An agreement to confer jurisdiction may also be implied. Thus where one bought stock in a French corporation, and in compliance with French law designated an agent to receive service, it is easy to find conscious assent that such service should be sufficient.[8] The decisions go further, however, and hold valid as against a non-resident stockholder in a joint-stock company a judgment recovered against the chairman of the company by virtue of a statute which designated such chairman as the proper person to sue and be sued as the representative of the stockholders, though the stockholder had no actual notice, either of the action or of the statute.[9] Similarly, where a statute provides that if a foreign corporation does business within the state through agents, service upon such agents is sufficient service upon the corporation, the doing of business in the state is an assent to the conditions of the statute, even though the corporation had no actual notice thereof.[10] Yet in both cases there is a genuine contract flowing from consent, and not an obligation in law imposed irrespective of consent. If the defendant had had actual notice of these conditions, and had then acted as he did, this would either amount to conscious assent thereto, or estop him to deny such assent. Instead of actual, he had constructive notice, and since the law deems these equivalent, his actions give rise to a genuine contract, precisely as if there had been conscious assent. If, therefore, an agreement is relied on to give jurisdiction, the elements of a genuine contract must be found either actually or constructively.

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[18] People *v.* Clark, 8 N. Y. Crim. Rep. 179.

[1] Sirdar Gurdyal Singh *v.* Rajah of Faridkote, [1894] A. C. 670; Bischoff *v.* Wethered, 9 Wall. (U. S.) 812.

[2] Sirdar Gurdyal Singh *v.* Rajah of Faridkote, *supra;* Pennoyer *v.* Neff, 95 U. S. 714.

[3] Ricardo *v.* Garcias, 12 Cl. & F. 367. See Fitzsimmons *v.* Johnson, 90 Tenn. 416.

[4] Voinet *v.* Barrett, 55 L. J. Q. B. 39; Hilton *v.* Guyot, 159 U. S. 113.

[5] Feyericks *v.* Hubbard, 18 T. L. R 381. See, also, Dicey, Conf. of Laws, 369.

[6] Teel *v.* Yost, 128 N. Y. 387; Snyder *v.* Critchfield, 44 Neb. 66.

[7] Grover, etc., Machine Co. *v.* Radcliffe, 137 U. S. 287.

[8] Vallée *v.* Dumergue, 4 Exch. 290.

[9] Bank of Australasia *v.* Nias, 16 Q. B. 717; Kersall *v.* Marshall, 1 C. B. (N. S.) 240; Bank of Australasia *v.* Harding, 9 C. B. 661. See Copin *v.* Adamson, L. R. 9 Exch. 345.

[10] St. Clair *v.* Cox, 106 U. S. 350.